

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 68 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI and  
MR.JUSTICE R.BALIA.

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

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COMMISSIONER OF INCOME-TAX

Versus

ROHIT MILLS LIMITED

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Appearance:

MR MIHIR JOSHI INSTRUCTED BY MR MANISH R BHATT for  
Petitioner  
SERVED BY RPAD for Respondent No. 1

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CORAM : MR.JUSTICE R.K.ABICHANDANI and  
MR.JUSTICE R.BALIA.

Date of decision: 14/02/97

ORAL JUDGEMENT

(Per R.K.Abichandani, J)

1. The Income Tax Appellate Tribunal, Ahmedabad has referred the following two questions for the opinion of this court under Section 256(2) of the Income Tax Act:

1. "Whether in the facts and circumstances of the case, the Appellate Tribunal was right in coming to the conclusion that the proceedings could not be reopened under Section 147(B) of the Act and that the provisions of gratuity on actuarial calculation should be allowed?"

2. "Whether on the facts and circumstances of the case, the Appellate Tribunal was right in coming to the conclusion that the assessment could not be reopened u/s. 147(b) of the Act and that the deduction on actual payment of gratuity by the assessee during the accounting year can be allowed?"

2. The relevant assessment year is 1973-74. In the original assessment the Income Tax Officer had allowed the claim of the assessee regarding provision of gratuity payable during the accounting period. The Income Tax Officer subsequently reopened the assessment under Section 147(b) of the Act, as a result of the audit objection and disallowed the claim. The Commissioner (Appeals) relying upon the decision of the Supreme Court in the case of Indian and Western Newspaper Society vs. C.I.T. reported in 119 ITR 996 set aside the reassessment. The Tribunal confirmed the order of the Income Tax Officer rejecting the contention of the Department that provision of gratuity with actuarial valuation and deduction on the actual payment of gratuity during the year should not be allowed.

3. The Tribunal found that the facts relating to both the points were before the Income Tax Officer at the time of the original assessment. It appeared that the audit department pointed out to the Income Tax Officer after the assessment that the view taken by him was not the only view possible and that the opposite view was required to be taken. The reopening was thus done on the basis of the objection by the audit department. The Supreme Court in Indian and Western Newspaper Society (supra) has held that the opinion of an internal audit of the Income Tax Department on a point of law cannot be regarded as 'information' within the meaning of Section 147(b) of the Act for the purpose of reopening an assessment. The part which embodies the opinion of the audit party in regard to the application or interpretation of the law cannot be taken into account by the Income Tax Officer, and the Income Tax Officer must

in every case determine for himself what is the effect and consequence of the law mentioned in the audit note and whether in consequence of the law which has now come to his notice he can reasonably believe that income has escaped assessment. The Income Tax Officer had when he made the original assessment considered the relevant provisions and the view of the audit party could not be regarded as the information so as to enable him to initiate reassessment proceedings.

4. We are therefore of the view that the Tribunal was right in coming to the conclusion that the proceedings could not have been reopened by the Income Tax Officer under Section 147(b) of the Act. Both the questions referred to us are therefore answered in the affirmative, on the above ground, in favour of the assessee and against the revenue. Reference stands disposed of with no order as to costs.